



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

July 7, 2023

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Nisan Cornibert**
Tax Registry No. 942770
Forensic Investigations Division
Disciplinary Case No. 2022-27026

The above named member of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on March 27, 2023, and was charged with the following:

DISCIPLINARY CASE NO. 2022-27026

1. Said Police Officer Nisan Cornibert, while on duty and assigned to the 108th Precinct, on or about July 20, 2022, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit, said Police Officer was discourteous to a supervisor.

P.G. 304-06, Page 1, Paragraph 1

**GENERAL REGULATIONS –
PROHIBITED CONDUCT**

In a Memorandum dated April 19, 2023, Assistant Deputy Commissioner Jeff S. Adler found Police Officer Nisan Cornibert guilty of the sole specification in Disciplinary Case No. 2022-27026. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

After reviewing the facts and circumstances of this matter, in light of Officer Cornibert's discourtesy to a supervisor and his cumulative disciplinary history, I have determined that a higher penalty and a period of close monitoring is warranted in connection with this matter.

Therefore, Police Officer Nisan Cornibert shall forfeit twenty-five (25) vacation days and be placed on one (1) year dismissal probation, as a disciplinary penalty.

Edward A. Caban
Acting Police Commissioner



POLICE DEPARTMENT

April 19, 2023

-----X
In the Matter of the Charges and Specifications :

- against - :

Police Officer Nisan Cornibert :

Tax Registry No. 942770 :

Forensic Investigations Division :

Case No.

2022-27026

-----X
At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Brittany Lercara, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Nisan Cornibert, while on duty and assigned to the 108 Precinct, on or about July 20, 2022, wrongfully engaged in conduct prejudicial to the good order, efficiency, and discipline of the Department, to wit, said Police Officer was discourteous to a supervisor. (*As amended*)

A.G 304-06, Page 1, Para 1

GENERAL REGULATIONS
PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on March 27, 2023. Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The Department called Sergeant Thompson Wen and Lieutenant Thomas Boller as witnesses. Respondent called Lieutenant Edward Ho, and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty, and recommend that he forfeit 20 vacation days.

ANALYSIS

On July 19, 2022, Respondent, who was at limited capacity due to an off-duty knee injury, was working at the Telephone Switchboard ("TS") desk inside the 108 Precinct. Respondent was scheduled to see an orthopedist later that afternoon, and so he requested one hour of "lost time" in order to make his doctor's appointment. In connection with that request, the 108 Precinct's procedure at the time still required him to fill out and submit a written "Leave of Absence" form (a "UF-28"), even though the Department policy had been changed to require that the form be completed electronically. The following afternoon, July 20, Respondent was at the TS desk when he was approached by a supervisor, Sergeant Thompson Wen, about the

written UF-28 that Respondent had been instructed to submit the previous day. It is alleged that during their conversation at the desk, Respondent was discourteous to Sergeant Wen.

Sergeant Wen testified that on July 19, he overheard a discussion between Respondent and the desk officer, Sergeant Kevin Gallagher, regarding Respondent's request for lost time. Sergeant Gallagher initially informed Respondent that the precinct's C.O. had denied his request, but shortly after received a follow-up phone call from the C.O. stating that Respondent could leave one hour early and take his meal at the end of his tour. Although Respondent already had filled out a written UF-28, Sergeant Gallagher instructed him to fill out a new one. Respondent asked why he had to fill out another form, and Sergeant Gallagher replied that since he had written "Revoked" across the first one after the request was initially denied, Respondent needed to fill out a new one. Sergeant Gallagher secured a replacement for Respondent at the TS desk, and left the stationhouse shortly after in order to go to traffic court; Sergeant Wen took over for Sergeant Gallagher as the desk officer for the remainder of the tour. (Tr. 23-25, 36-41)

Later that day, after Respondent had already departed, Sergeant Wen observed the new UF-28 under the keyboard at the TS desk. Contrary to requirements, the form was missing the relevant dates, times, and approval signature. Sergeant Wen testified that he called Sergeant Gallagher and informed him of the incomplete form, then placed it in Sergeant Gallagher's mailbox. (Tr. 25-26, 42-44, 55)

The following afternoon, when Sergeant Wen arrived at the precinct, he observed Respondent at the TS desk, and used it as an opportunity to instruct him on the proper way to fill out a UF-28. Sergeant Wen testified that in a normal tone of voice he told Respondent, "Hey, listen, when you leave, before you take lost time, remember to fill out a 28 before you leave." Respondent immediately became "combative" -- his face was visibly upset, and he raised his

voice as he stated that he *did* fill out the form and had given it to the desk where it was signed. Sergeant Wen responded that *he* had been on the desk after Sergeant Gallagher left, that he did not receive a UF-28 from Respondent, but had instead found it at the TS desk after Respondent had left. Sergeant Wen believed that Respondent was challenging his authority, and informed Respondent that the next time he failed to complete the form properly he would receive a Command Discipline ("CD"). According to Sergeant Wen, Respondent rolled back in his chair, extended his arms with his palms up, and loudly stated, "Do we have a problem?" Sergeant Wen repeated his general instruction on the proper completion of the UF-28, and walked away. He called Sergeant Gallagher and confirmed that Respondent had not provided him a new written UF-28 prior to Sergeant Gallagher's departure from the precinct the previous day. Sergeant Wen acknowledged that no profanity was used during his exchange with Respondent. There were other MOS in the vicinity at the time, including Lieutenant Thomas Boller and Sergeant Thomas Denicker; no one intervened. (Tr. 27-30, 44-52)

Lieutenant Boller, the Platoon Commander at the 108 Precinct, testified that at the time of the incident he was sitting approximately 10 feet behind Respondent. Lieutenant Boller overheard Sergeant Wen speaking with Respondent about the need to properly fill out a UF-28 and hand it to a supervisor. Sergeant Wen informed Respondent that he would be issued a CD the next time he failed to do so. Lieutenant Boller heard Respondent state several times, in a loud voice, "Do you have a problem with me?" There was additional back-and-forth between them about the form, during which Respondent was yelling. Sergeant Wen, in contrast, did not elevate his voice, and was conducting himself professionally. Lieutenant Boller testified that he was about to intervene, but the conversation concluded and Sergeant Wen walked away, so he

chose to let Sergeant Wen deal with the situation. The entire exchange lasted approximately 20-30 seconds, and no profanity was used. (Tr. 61-63, 65-66, 68-72)

Sergeant Denicker did not appear to testify. Instead, the parties stipulated to the admission into evidence of an official statement he provided on August 11, 2022. (Dept. Exs. 1 & 1A) In that interview, Sergeant Denicker stated he was the desk officer on the date of the incident. He observed the conversation between Sergeant Wen and Respondent regarding a UF-28 since he was right next to them, though he could not recall the specific words that were said. According to Sergeant Denicker, it started out as a normal conversation, before Respondent elevated his tone. He believed that Sergeant Wen raised his voice as well. Sergeant Denicker stated that Respondent was talking back to Sergeant Wen and not being respectful. He felt that Respondent was being rude and discourteous to Sergeant Wen. (Dept. Ex. 1A at 3-5)

Lieutenant Edward Ho, the Integrity Control Officer at the 108 Precinct, testified that after Sergeant Wen informed him about the incident with Respondent, Lieutenant Ho also spoke with Lieutenant Boller and Sergeant Denicker, and prepared a CD charging Respondent with being discourteous to a supervisor, and for failing to prepare and submit a proper UF-28. (Resp. Ex. A) The Commanding Officer of the precinct met with Respondent on July 27, 2022, and offered Respondent a penalty of four hours to cover the CD; Respondent declined to accept any disciplinary action without a hearing. After the CD was declined, Lieutenant Ho reviewed video footage from the precinct. According to Lieutenant Ho, Respondent could not be seen in the video, though Sergeant Wen was visible. Also, there were civilians in the area where the incident occurred. (Tr. 77-86, 90-91)

Respondent testified that after asking Sergeant Gallagher about taking one hour of lost time, he filled out a written UF-28 as well as doing it online. The initial request was

disapproved, but later the C.O. allowed Respondent to take the hour. Sergeant Gallagher instructed him to prepare a new UF-28 and leave it on his desk, which Respondent did. Sergeant Gallagher secured a replacement for the TS desk, and Respondent departed for his doctor's appointment. (Tr. 100-05, 117, 120-21)

When Respondent appeared for work the following day, Sergeant Gallagher approached him in the locker room and said that Respondent needed to fill in the date on the UF-28; Respondent did so, and handed the form back to Sergeant Gallagher who thanked him. Respondent testified that he thought that was the end of the matter, until Sergeant Wen approached him at the desk and, in an aggressive manner, told him that the next time he failed to fill out a UF-28 properly he would receive a CD. Respondent answered that he *did* fill out the form, and Sergeant Wen, in a raised voice, stated that he did not. According to Respondent, Sergeant Wen was confrontational, hostile, and unprofessional. Respondent testified that he, himself, did not raise his voice, and he never asked Sergeant Wen if they had a problem. (Tr. 106-12, 122-27)

Their conversation ended when Sergeant Wen said he was going to issue Respondent a CD, then slammed the gate and walked away. Respondent testified that he was expecting the CD would be for the UF-28 form, which he intended to contest. When he learned that he also was being accused of discourtesy, Respondent was "blindsided," since he felt that he had not been discourteous, and had merely answered Sergeant Wen's questions. He rejected the offer of four hours, since the penalty was excessive for a dispute over one hour of lost time. (Tr. 110-15, 127-28)

Specification 1 charges Respondent with being discourteous to a supervisor, Sergeant Wen. Specifically, it is alleged that as Sergeant Wen was addressing Respondent regarding the

need to complete and submit a written UF-28 before leaving early. Respondent raised his voice and spoke to Sergeant Wen in a disrespectful, discourteous manner, and stated to Sergeant Wen, "Do we have a problem?"

At trial, the parties presented opposing versions of the conversation. Respondent denied that he made that statement, and insisted he spoke in a normal tone and was not discourteous toward the supervisor. Respondent claimed that it was Sergeant Wen who was confrontational during their interaction.

Sergeant Wen, meanwhile, testified that Respondent was combative, and appeared to be visibly upset that he was being spoken to regarding the need to submit a completed UF-28. Respondent raised his voice, and erroneously claimed that he had filled out the form completely and left it on Sergeant Gallagher's desk before leaving work. Additionally, Respondent even pushed back in his chair, extended his arms, and challenged Sergeant Wen by asking if they had a problem. Sergeant Wen was detailed and consistent in his account of what occurred, and I credit his testimony.

Moreover, Sergeant Wen's general description of events was essentially corroborated by two other supervisors who were in the vicinity during the exchange. Lieutenant Boller credibly testified that Sergeant Wen was conducting himself in a professional manner, while Respondent raised his voice to Sergeant Wen and stated, "Do you have a problem with me?" Indeed, Lieutenant Boller was on the verge of intervening, but the conversation ended. Similarly, in his recorded statement, Sergeant Denicker said that Respondent was talking back to Sergeant Wen and not being respectful.

Even if Respondent was frustrated that so much was being made of his request for just one hour of lost time, it was not appropriate for him to address a supervisor in the manner that he

did. The credible evidence has established that Respondent was discourteous to Sergeant Wen as alleged. Accordingly, I find Respondent guilty of Specification 1.

PENALTY

In order to determine an appropriate penalty, this tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on July 20, 2006, has been found guilty of being discourteous to Sergeant Wen. The Department Advocate recommends a penalty of 25 vacation days and dismissal probation. Counsel for Respondent argues that that recommendation is excessive.

As the Department Advocate noted, the Disciplinary Guidelines do not squarely address a situation where an MOS is discourteous to a supervisor. In some cases, where an officer acts with discourtesy toward a superior officer in the context of the supervisor conveying a lawful order, that conduct might constitute insubordination, which is covered by the guidelines. Here, Sergeant Wen was not directing Respondent to perform a specific task; rather, he was generally instructing Respondent about the importance of adhering to the precinct's protocol with respect to correctly filling out and submitting a written UF-28 in a timely manner. In this context, Respondent's actions do not support a finding of insubordination, and so a penalty for his discourtesy must be fashioned that is fair and appropriate under the circumstances presented here.

On the one hand, counsel for Respondent correctly points out that Respondent did successfully obtain approval before he left work one hour early on July 19, and a replacement was secured for the TS desk. When Sergeant Gallagher presented the incomplete form to him the following morning, Respondent immediately filled in the missing information. During his interaction with Sergeant Wen on July 20, which was brief in duration, Respondent did not use any profanity toward the supervisor.

Even so, there was no justification for the discourteous manner in which Respondent addressed his supervisor. Rather than listen and acknowledge Sergeant Wen's concerns regarding the need to correctly complete a UF-28 when leaving early, Respondent, by losing his temper, needlessly escalated the interaction into a confrontational one, to the point where a lieutenant was on the verge of intervening. It also is troubling that Respondent chose to do so in an open area of the precinct, with MOS and civilians in the vicinity. Additionally, Respondent has prior disciplinary history: in 2017, he forfeited 25 vacation days and forfeited time and leave balances for being absent from his assignment without permission on a total of eight occasions, and related charges; in 2015, Respondent forfeited 10 vacation days for wrongful association.

On balance, a penalty of 20 vacations is fair and appropriate to address Respondent's discourteous behavior in this matter. This significant loss of days will hopefully deter Respondent from further misconduct. Taking into account the totality of the facts and circumstances in this case, including Respondent's disciplinary history, I recommend that Respondent forfeit twenty (20) vacation days.



Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jeff S. Adler".

Jeff S. Adler
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER NISAN CORNIBERT
TAX REGISTRY NO. 942770
DISCIPLINARY CASE NO. 2022-27026

Respondent was appointed to the Department on July 20, 2006. On his three most recent annual performance evaluations, he was rated "Exceeds Expectations" for 2019, 2020, and 2021. Respondent has been awarded two medals for Excellent Police Duty, and one medal for Meritorious Police Duty.

In 2015, Respondent forfeited 10 vacation days after pleading guilty to knowingly associating with a person or organization reasonably believed to be engaged in, likely to engage in, or to have engaged in criminal activities.

In 2017, Respondent forfeited 25 vacation days and forfeited time and leave balances in the amount of 48 hours and 47 minutes, for being absent from his assignment without permission on a total of eight occasions. Respondent improperly began his tour at court instead of being present for roll call. On a separate occasion, Respondent failed to call the Desk Officer to have his end of tour memorialized in the precinct command log. Respondent also failed and neglected to maintain his activity log on eight occasions.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials